IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 20TH NOVEMBER 2006 / 29TH KARTHIKA 1928

Crl.Rev.Pet.No. 4022 of 2006()

CRA.467/2005 of ADDL.SESSIONS COURT,-I, MAVELIKKARA
CC.426/2003 of JUDL.MAGISTRATE OF FIRST CLASS-I, CHENGANNUR

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REVN. PETITIONER: APPELLANT/ACCUSED

RAJASEKHARAN, S/O. DAMODARAN,
SREEKAILASAM, PANDANADU P.O., CHENGANNUR.

BY ADV. SRI.R.VINOD

RESPONDENTS: RESPONDENT/COMPLAINANT AND STATE

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1. RADHAKRISHNA PILLAI,
PRIYANKA NIVAS, ALA SOUTH MURI,
ALA VILLAGE.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI KAMMAPU

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 20/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J.

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CRL.R.P. No. 4022 of 2006

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Dated this the 20th day of November, 2006

O R D E R

The petitioner was convicted for the offence punishable under Section 138 of the Negotiable Instruments Act and he was sentenced to undergo simple imprisonment for two months and to pay a compensation of Rs.50,000/- to the complainant under Section 357(3) Cr.P.C., and in default of payment of compensation to suffer simple imprisonment for a period of one month. On appeal by the accused, the appellate court allowed the appeal in part and while confirming conviction, the sentence was reduced to imprisonment for a period of one month. The direction to pay compensation was confirmed.

2. The case of the complainant is that accused issued Exhibit P1 cheque in discharge of a debt. On presentation of the cheque, it was dishonoured on the ground of insufficiency of funds. The contention of the accused is that there was no occasion for borrowing any amount from the

complainant. The accused contended that Exhibit P1 cheque was issued by him to one R.K.Nair, who promised a job in the Devaswom Board. It is his further case that the cheque was entrusted by R.K.Nair to the complainant and this complaint is foisted by him. The trial court considered the evidence of PW.1 and held that the case put forward by the accused is not brought out in the cross-examination. There was no defence evidence. The trial court also held that the accused failed to rebut the presumption under Section 139 of the Act. The appellate court also considered the evidence in detail and held that the trial court was right in holding that the accused committed the offence under Section 138 of the Act. However, the appellate court reduced the substantive sentence and the period of imprisonment was reduced from two months to one month. No grounds are made out for interference in the finding of guilt under Section 138 of the Act in revision under Section 397 Cr.P.C. There is no error or illegality in the judgment of the courts below. The conviction of the petitioner under Section 138 of the Act, is therefore, confirmed.

3. However, in the facts and circumstances of this

case, I am of the view that the sentence can be reduced to imprisonment till the rising of the court. Since the conviction is being confirmed, I do not think that notice to the first respondent is necessary. Accordingly, Criminal Revision Petition is allowed in part and the sentence of imprisonment for one month is altered and reduced to imprisonment till the rising of the court. The direction to pay the compensation is confirmed.

4. However, the petitioner is granted two months' time to pay the compensation amount. The petitioner shall appear before the trial court on 15/12/2006 to suffer the imprisonment till the rising of the court and he shall continue to appear before the trial court as and when directed by the trial court, till compensation amount is deposited. The proceedings for execution in respect of the compensation amount shall be kept in abeyance for a period of two months.

(K.T.SANKARAN)
Judge

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